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Chapter No. 494
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SR 1344

SENATE BILL NO. 2179

Originated in Senate Liz Welch Secretary

SENATE BILL NO. 2179

AN ACT TO CREATE A NEW MISSISSIPPI DEPARTMENT OF CHILD PROTECTION SERVICES; TO PROVIDE FOR A COMMISSIONER OF CHILD PROTECTION SERVICES TO BE APPOINTED BY THE GOVERNOR; TO PROVIDE THAT THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES AND THE COMMISSIONER OF CHILD PROTECTION SERVICES SHALL DEVELOP A TRANSITION PLAN FOR IMPLEMENTATION OF THE NEW DEPARTMENT; TO PROVIDE FOR THE TRANSFER OF THE FUNCTIONS OF THE OFFICE OF FAMILY AND CHILDREN'S SERVICES IN THE DEPARTMENT OF HUMAN SERVICES TO THE NEW MISSISSIPPI DEPARTMENT OF CHILD PROTECTION SERVICES EFFECTIVE JULY 1, 2018; TO AMEND SECTION 43-15-111, MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO AMEND SECTION 25-3-39, MISSISSIPPI CODE OF 1972, TO EXEMPT THE SALARY OF THE COMMISSIONER OF CHILD PROTECTION SERVICES FROM STATUTORY SALARY LIMITATIONS; TO AMEND SECTION 25-9-120, MISSISSIPPI CODE OF 1972, TO EXEMPT PERSONAL SERVICE CONTRACTS ENTERED INTO BY THE DEPARTMENT OF HUMAN SERVICES OR THE DEPARTMENT OF CHILD PROTECTION SERVICES FROM THE REGULATIONS OF THE PERSONAL SERVICE CONTRACT REVIEW BOARD; TO AMEND SECTION 25-9-127, MISSISSIPPI CODE OF 1972, TO EXEMPT PERSONNEL ACTIONS OF THE DEPARTMENT OF HUMAN SERVICES AND THE DEPARTMENT OF CHILD PROTECTION SERVICES FROM STATE PERSONNEL BOARD REGULATIONS; TO AMEND SECTIONS 25-53-1 AND 25-53-5, MISSISSIPPI CODE OF 1972, TO EXEMPT ACTIONS OF THE DEPARTMENT OF HUMAN SERVICES AND THE DEPARTMENT OF CHILD PROTECTION SERVICES FROM THE REGULATIONS OF THE MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) There is hereby created a Mississippi

Department of Child Protection Services.

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(2) The Chief Administrative Officer of the Department of Child Protection Services shall be the Commissioner of Child Protection Services who shall be appointed by the Governor with the advice and consent of the Senate. The commissioner shall possess the following qualifications:

(a) A bachelor's degree from an accredited institution of higher learning and ten (10) years' experience in management, public administration, finance or accounting; or

(b) A master's or doctoral degree from an accredited institution of higher learning and five (5) years' experience in management, public administration, finance, law or accounting.

(3) On a temporary basis, but for no longer than March 1, 2017, the Department of Child Protection Services may function as a Division of the Department of Human Services.

(4) The Commissioner of Child Protection Services may assign to the appropriate offices such powers and duties deemed appropriate to carry out the lawful functions of the programs transferred to the department under this act. The commissioner is authorized to employ three (3) administrators who shall serve at his will and pleasure to direct the bureaus and offices necessary to carry out the lawful functions of the programs transferred to the department.

(5) The Commissioner of Child Protection Services and the Executive Director of the Department of Human Services shall develop and implement a plan for the orderly establishment of the

Department of Child Protection Services and its transition from the Office of Family and Children's Services of the Department of Human Services. The plan shall:

(a) Describe a mechanism for the transfer of any equipment, supplies, records, furnishings or other materials, resources or funds dedicated to the operation of the Office of Family and Children's Services of the Department of Human Services, which may be useful to the Department of Child Protection Services;

(b) Determine the allocation of resources between the newly created Department of Child Protection Services and the Department of Human Services, as practicable;

(c) Determine the allocation of functions where the performance of services may be shared between the Department of Child Protection Services and other employees of the Department of Human Services, as practicable;

(d) Determine whether any administrative support services, such as Information Technology Services, bookkeeping and payroll can continue to be provided by the Department of Human Services; and

(e) Identify other areas deemed relevant by the commissioner and make recommendations thereon to achieve an orderly transition.

The Commissioner of Child Protection Services and the Executive Director of the Department of Human Services shall

recommend any necessary legislation to the Governor and the Legislature before the 2017 Regular Session.

(6) The new Mississippi Department of Child Protection Services is authorized to carry out the duties and responsibilities of the Office of Family and Children's Services of the Department of Human Services during the transition period from and after passage of this act through July 1, 2018. The Office of Family and Children's Services of the Department of Human Services is directed to cooperate with the new department in transferring resources and employees in furtherance of this act. From and after July 1, 2018, the programs and services provided by the Office of Family and Children's Services of the Department of Human Services under the following statutes shall be provided by the Department of Child Protection Services: Sections 41-87-5, 41-111-1, 43-1-2, 43-1-51, 43-1-55, 43-1-57, 43-1-63, 43-15-3, 43-15-5, 43-15-6, 43-15-13, 43-15-15, 43-15-17, 43-15-19, 43-15-21, 43-15-23, 43-15-51, 43-15-103, 43-15-105, 43-15-115, 43-15-125, 43-15-201, 43-15-203, 43-15-207 and 43-18-3, Mississippi Code of 1972.

SECTION 2. Section 43-15-111, Mississippi Code of 1972, is amended as follows:

43-15-111. The provisions of this * * * act do not apply to:

(* * * a) A facility or program owned or operated by an agency of the State of Mississippi or United States government;

(* * *b) A facility or program operated by or under an exclusive contract with the Department of Corrections;

(* * *c) Schools and educational programs and facilities, the primary purpose of which is to provide a regular course of study necessary for advancement to a higher educational level or completion of a prescribed course of study, and which may, incident to such educational purposes, provide boarding facilities to the students of such programs.

(* * *d) Any residential child-caring agency and/or child-placing agency operated or conducted under the auspices of a religious institution and meeting the requirements or conditions of this section shall be exempt from the licensure requirements of this article under the following conditions: (* * *i) such religious institution must have a tax exempt status as a nonprofit religious institution in accordance with Section 501(c) of the Internal Revenue Code of 1954, as amended, or the real property owned and exclusively occupied by the religious institution must be exempt from location taxation, and (* * *ii) the agency or institution must be in compliance with the requirements of the Child Residential Home Notification Act, Section 43-16-1 et seq., Mississippi Code of 1972, and must not be in violation of Section 43-16-21(c) regarding the abuse and/or neglect of any child served by such home who has been adjudicated by the youth court as an abused and/or neglected child. Nothing in this * * * paragraph shall prohibit a residential child-caring agency or child-placing

agency operated by or conducted under the auspices of a religious institution from obtaining a license pursuant to this article.

SECTION 3. Section 25-3-39, Mississippi Code of 1972, is amended as follows:

25-3-39. (1) (a) Except as otherwise provided in this section, no public officer, public employee, administrator, or executive head of any arm or agency of the state, in the executive branch of government, shall be paid a salary or compensation, directly or indirectly, greater than one hundred fifty percent (150%) of the salary fixed in Section 25-3-31 for the Governor, nor shall the salary of any public officer, public employee, administrator, or executive head of any arm or agency of the state, in the executive branch of government, be supplemented with any funds from any source, including federal or private funds. Such salaries shall be completely paid by the state. All academic officials, members of the teaching staffs and employees of the state institutions of higher learning, the Mississippi Community College Board, and community and junior colleges, and licensed physicians who are public employees, shall be exempt from this subsection. All professional employees who hold a bachelor's degree or more advanced degree from an accredited four-year college or university or a certificate or license issued by a state licensing board, commission or agency and who are employed by the Department of Mental Health shall be exempt from this subsection if the State Personnel Board approves the exemption.

The Commissioner of Child Protection Services is exempt from this subsection.

(b) The Governor shall fix the annual salary of the Executive Director of the Mississippi Development Authority, the annual salary of the Commissioner of Child Protection Services, and the annual salary of the Chief of Staff of the Governor's Office. The salary of the Governor's Chief of Staff shall not be greater than one hundred fifty percent (150%) of the salary of the Governor and shall be completely paid by the state without supplementation from another source. The salary of the Executive Director of the Mississippi Development Authority may be greater than one hundred fifty percent (150%) of the salary of the Governor and may be supplemented with funds from any source, including federal or private funds; however, any state funds used to pay the salary of the Executive Director of the Mississippi Development Authority shall not exceed one hundred fifty percent (150%) of the salary of the Governor. If the executive director's salary is supplemented with private funds, the Mississippi Development Authority shall publish on its website the amount of the supplement and the name of the donor of the private funds.

(2) No public officer, employee or administrator shall be paid a salary or compensation, directly or indirectly, in excess of the salary authorized to be paid the executive head of the state agency or department in which he is employed. The State Personnel Board, based upon its findings of fact, may exempt

physicians and actuaries from this subsection when the acquisition of such professional services is precluded based on the prevailing wage in the relevant labor market.

(3) The executive head of any state agency or department appointed by the Governor, in such executive head's discretion, may waive all or any portion of the salary or compensation lawfully established for the position.

SECTION 4. Section 25-9-120, Mississippi Code of 1972, is amended as follows:

25-9-120. (1) Contract personnel, whether classified as contract workers or independent contractors shall not be deemed state service or nonstate service employees of the State of Mississippi, and shall not be eligible to participate in the Public Employees' Retirement System, or the State and School Employees' Health Insurance Plan, nor be allowed credit for personal and sick leave and other leave benefits as employees of the State of Mississippi, notwithstanding Sections 25-3-91 through 25-3-101; 25-9-101 through 25-9-151; 25-11-1 through 25-11-126; 25-11-128 through 25-11-131; 25-15-1 through 25-15-23 and for the purpose set forth herein. Contract workers, i.e., contract personnel who do not meet the criteria of independent contractors, shall be subject to the provisions of Section 25-11-127.

(2) (a) There is hereby created the Personal Service Contract Review Board, which shall be composed of the following members:

(i) The State Personnel Director;

(ii) Two (2) individuals appointed by the Governor with the advice and consent of the Senate;

(iii) Two (2) individuals appointed by the Lieutenant Governor with the advice and consent of the Senate; and

(iv) The Executive Director of the Department of Finance and Administration, serving as an ex officio member;

(b) The initial terms of each appointee shall be as follows:

(i) One (1) member appointed by the Governor to serve for a term ending June 30, 2017;

(ii) One (1) member appointed by the Governor to serve for a term ending June 30, 2020;

(iii) One (1) member appointed by the Lieutenant Governor to serve for a term ending June 30, 2018; and

(iv) One (1) member appointed by the Lieutenant Governor to serve for a term ending June 30, 2019.

After the expiration of the initial terms, all appointed members' terms shall be for a period of four (4) years from the expiration date of the previous term, and until such time as the member's successor is duly appointed and qualified;

(c) When appointing members to the Personal Service Contract Review Board, the Governor and Lieutenant Governor shall take into consideration persons who possess at least five (5) years of management experience in general business, health care,

or finance for an organization, corporation, or other public or private entity. Any person, or any employee or owner of a company, who receives any grants, procurements or contracts that are subject to approval under this section shall not be appointed to the Personal Service Contract Review Board. Any person, or any employee or owner of a company, who is a principal of the source providing the personal or professional service shall not be appointed to the Personal Service Contract Review Board if the principal owns or controls a greater than five percent (5%) interest or has an ownership value of One Million Dollars (\$1,000,000.00) in the source's business, whichever is smaller;

(d) Members of the Personal Service Contract Review Board shall be entitled to per diem as authorized by Section 25-3-69 and travel reimbursement as authorized by Section 25-3-41;

(e) The State Personnel Director shall be chairman and shall preside over the meetings of the board. The board shall annually elect a vice chairman, who shall serve in the absence of the chairman. No business shall be transacted, including adoption of rules of procedure, without the presence of a quorum of the board. Three (3) members shall be a quorum. No action shall be valid unless approved by the chairman and two (2) other of those members present and voting, entered upon the minutes of the board and signed by the chairman. Necessary clerical and administrative support for the board shall be provided by the State Personnel Board. Minutes shall be kept of the proceedings of each meeting,

copies of which shall be filed on a monthly basis with the Chairmen of the Accountability, Efficiency and Transparency Committees of the Senate and House of Representatives.

(3) The Personal Service Contract Review Board shall have the following powers and responsibilities:

(a) Promulgate rules and regulations governing the solicitation and selection of contractual services personnel including personal and professional services contracts for any form of consulting, policy analysis, public relations, marketing, public affairs, legislative advocacy services or any other contract that the board deems appropriate for oversight, with the exception of any personal service contracts entered into for computer or information technology-related services governed by the Mississippi Department of Information Technology Services, any personal service contracts entered into by the Mississippi Department of Transportation, any personal service contracts entered into by the Department of Human Services through June 30, 2018, which the Executive Director of the Department of Human Services determines would be useful in establishing and operating the Department of Child Protection Services, any personal service contracts entered into by the Department of Child Protection Services through June 30, 2019, and any contract for attorney, accountant, auditor, architect, engineer, and utility rate expert services. Any such rules and regulations shall provide for maintaining continuous internal audit covering the activities of

such agency affecting its revenue and expenditures as required under Section 7-7-3(6)(d) * * *. Any rules and regulation changes related to personal and professional services contracts that may be proposed by the Personal Service Contract Review Board shall be submitted to the Chairmen of the Accountability, Efficiency and Transparency Committees of the Senate and House of Representatives at least fifteen (15) days prior to the board voting on the proposed changes, and such rules and regulation changes, if adopted, shall be promulgated in accordance with the Mississippi Administrative Procedures Act;

(b) Approve all personal and professional services contracts involving the expenditures of funds in excess of Seventy-five Thousand Dollars (\$75,000.00);

(c) Develop mandatory standards with respect to contractual services personnel which require invitations for public bid, requests for proposals, record keeping and financial responsibility of contractors. The Personal Service Contract Review Board shall, unless exempted under this paragraph (c) or under paragraph (d) or (j) of this subsection (3), require the agency involved to advertise such contract for public bid, and may reserve the right to reject any or all bids;

(i) Any agency that seeks to procure personal or professional service contracts that are required to be approved by the Personal Service Contract Review Board may petition for relief from any requirement that the agency use competitive bidding as a

procurement method. The agency shall be required to show to the Personal Service Contract Review Board's satisfaction one (1) of the following:

1. Federal law or federal court order has established limitations on the use of competitive bidding for the personal or professional contracts the agency is seeking to procure; or

2. The agency is required to hire professionals whose members are prohibited from bidding by the rules of professional conduct promulgated by the regulating agency or agencies for that professional; or

3. The agency can establish that the use of competitive bidding will be counterproductive to the business of the agency.

(ii) If the Personal Service Contract Review Board determines that competitive bidding shall not be required for the particular personal or professional service the agency seeks to procure, then the Personal Service Contract Review Board shall direct the agency to establish a competitive procurement procedure for selecting the personal or professional service contract that ensures open, transparent procedures for making a selection. Such procedures shall include, but not be limited to, qualifications based selection or requests for qualifications. The Personal Service Contract Review Board shall also have the authority to

audit the records of any agency to ensure it has used competitive procedures to contract for the personal or professional service;

(d) Prescribe certain circumstances whereby agency heads may enter into contracts for personal and professional services without receiving prior approval from the Personal Service Contract Review Board. The Personal Service Contract Review Board may establish a preapproved list of providers of various personal and professional services for set prices with which state agencies may contract without bidding or prior approval from the board;

(e) To provide standards for the issuance of requests for proposals, the evaluation of proposals received, consideration of costs and quality of services proposed, contract negotiations, the administrative monitoring of contract performance by the agency and successful steps in terminating a contract;

(f) To present recommendations for governmental privatization and to evaluate privatization proposals submitted by any state agency;

(g) To authorize personal and professional service contracts to be effective for more than one (1) year provided a funding condition is included in any such multiple year contract, except the State Board of Education, which shall have the authority to enter into contractual agreements for student assessment for a period up to ten (10) years. The State Board of

Education shall procure these services in accordance with the Personal Service Contract Review Board procurement regulations;

(h) To request the State Auditor to conduct a performance audit on any personal or professional service contract;

(i) Prepare an annual report to the Legislature concerning the issuance of personal service contracts during the previous year, collecting any necessary information from state agencies in making such report;

(j) Develop and implement the following standards and procedures for the approval of any sole source contract for personal and professional services regardless of the value of the procurement:

(i) For the purposes of this paragraph (j), the term "sole source" means only one (1) source is available that can provide the required personal or professional service.

(ii) An agency that has been issued a binding, valid court order mandating that a particular source or provider must be used for the required service must include a copy of the applicable court order in all future sole source contract reviews for the particular personal or professional service referenced in the court order.

(iii) Any agency alleging to have a sole source for any personal or professional service shall have published on the procurement portal website established by Sections 25-53-151

and 27-104-165, for at least fourteen (14) days, the terms of the proposed contract for those services. In addition, the publication shall include, but is not limited to, the following information:

1. The personal or professional service offered in the contract;
2. An explanation of why the personal or professional service is the only one that can meet the needs of the agency;
3. An explanation of why the source is the only person or entity that can provide the required personal or professional service;
4. An explanation of why the amount to be expended for the personal or professional service is reasonable; and
5. The efforts that the agency went through to obtain the best possible price for the personal or professional service.

(iv) If any person or entity objects and proposes that the personal or professional service published under subparagraph (iii) of this paragraph (j) is not a sole source service and can be provided by another person or entity, then the objecting person or entity shall notify the Personal Service Contract Review Board and the agency that published the proposed

sole source contract with a detailed explanation of why the personal or professional service is not a sole source service.

(v) 1. If the agency determines after review that the personal or professional service in the proposed sole source contract can be provided by another person or entity, then the agency must withdraw the sole source contract publication from the procurement portal website and submit the procurement of the personal or professional service to an advertised competitive bid or selection process.

2. If the agency determines after review that there is only one (1) source for the required personal or professional service, then the agency may appeal to the Personal Service Contract Review Board. The agency has the burden of proving that the personal or professional service is only provided by one (1) source.

3. If the Personal Service Contract Review Board has any reasonable doubt as to whether the personal or professional service can only be provided by one (1) source, then the agency must submit the procurement of the personal or professional service to an advertised competitive bid or selection process. No action taken by the Personal Service Contract Review Board in this appeal process shall be valid unless approved by the chairman and two (2) other members of the Personal Service Contract Review Board present and voting.

(vi) The Personal Service Contract Review Board shall prepare and submit a quarterly report to the House of Representatives and Senate Committees on Accountability, Efficiency and Transparency that details the sole source contracts presented to the Personal Service Contract Review Board and the reasons that the Personal Service Contract Review Board approved or rejected each contract. Such quarterly reports shall also include the documentation and memoranda required in subsection (5) of this section. An agency that submitted a sole source contract shall be prepared to explain the sole source contract to each committee by December 15 of each year upon request by the committee.

(4) Any contract submitted to the Personal Service Contract Review Board for review and approval shall be presumed to be approved if the Personal Service Contract Review Board does not object to the contract within thirty (30) days of the agency's submission of the contract. All submissions shall be made thirty (30) days before the monthly meeting of the Personal Service Contract Review Board or as prescribed by the Personal Service Contract Review Board. If the Personal Service Contract Review Board rejects any contract submitted for review or approval, the Personal Service Contract Review Board shall clearly set out the reasons for its action, including, but not limited to, the policy that the agency has violated in its submitted contract and any corrective actions that the agency may take to amend the contract

to comply with the rules and regulations of the Personal Service Contract Review Board.

(5) All sole source contracts for personal and professional services awarded by state agencies, whether approved by an agency head or the Personal Service Contract Review Board, shall contain in the procurement file a written determination for the approval, using a request form furnished by the Personal Service Contract Review Board. The written determination shall document the basis for the determination, including any market analysis conducted in order to ensure that the service required was practicably available from only one (1) source. A memorandum shall accompany the request form and address the following four (4) points:

(a) Explanation of why this service is the only service that can meet the needs of the purchasing agency;

(b) Explanation of why this vendor is the only practicably available source from which to obtain this service;

(c) Explanation of why the price is considered reasonable; and

(d) Description of the efforts that were made to conduct a noncompetitive negotiation to get the best possible price for the taxpayers.

(6) The Personal Service Contract Review Board shall develop and promulgate rules and regulations to define the allowable legal relationship between contract employees and the contracting departments, agencies and institutions of state government under

the jurisdiction of the State Personnel Board, in compliance with the applicable rules and regulations of the federal Internal Revenue Service (IRS) for federal employment tax purposes. Under these regulations, the usual common law rules are applicable to determine and require that such worker is an independent contractor and not an employee, requiring evidence of lawful behavioral control, lawful financial control and lawful relationship of the parties. Any state department, agency or institution shall only be authorized to contract for personnel services in compliance with * * * those regulations.

(7) No member of the Personal Service Contract Review Board shall use his official authority or influence to coerce, by threat of discharge from employment, or otherwise, the purchase of commodities or the contracting for personal or professional services under this section.

(8) Nothing in this section shall impair or limit the authority of the Board of Trustees of the Public Employees' Retirement System to enter into any personal or professional services contracts directly related to their constitutional obligation to manage the trust funds, including, but not limited to, actuarial, custodial banks, cash management, investment consultant, and investment management contracts.

(9) Notwithstanding the exemption of personal service contracts entered into by the Department of Human Services and personal service contracts entered into by the Department of Child

Protection Services from the provisions of this section under subsection (3)(a), before the Department of Human Services or the Department of Child Protection Services may enter into a personal service contract, the department(s) shall give notice of the proposed personal service contract to the Personal Service Contract Review Board for any recommendations by the board. Upon receipt of the notice, the board shall post the notice on its website and on the procurement portal website established by Sections 25-53-151 and 27-104-165. If the board does not respond to the department(s) within seven (7) calendar days after receiving the notice, the department(s) may enter the proposed personal service contract. If the board responds to the department(s) within seven (7) calendar days, then the board has seven (7) calendar days from the date of its initial response to provide any additional recommendations. After the end of the second seven-day period, the department(s) may enter the proposed personal service contract. The board is not authorized to disapprove any proposed personal service contracts. This subsection shall stand repealed on July 1, 2019.

SECTION 5. Section 25-9-127, Mississippi Code of 1972, is amended as follows:

25-9-127. (1) No employee of any department, agency or institution who is included under this chapter or hereafter included under its authority, and who is subject to the rules and regulations prescribed by the state personnel system, may be

dismissed or otherwise adversely affected as to compensation or employment status except for inefficiency or other good cause, and after written notice and hearing within the department, agency or institution as shall be specified in the rules and regulations of the State Personnel Board complying with due process of law; and any employee who has by written notice of dismissal or action adversely affecting his compensation or employment status shall, on hearing and on any appeal of any decision made in such action, be required to furnish evidence that the reasons stated in the notice of dismissal or action adversely affecting his compensation or employment status are not true or are not sufficient grounds for the action taken; provided, however, that this provision shall not apply (a) to persons separated from any department, agency or institution due to curtailment of funds or reduction in staff when such separation is in accordance with rules and regulations of the state personnel system; (b) during the probationary period of state service of twelve (12) months; and (c) to an executive officer of any state agency who serves at the will and pleasure of the Governor, board, commission or other appointing authority.

(2) The operation of a state-owned motor vehicle without a valid Mississippi driver's license by an employee of any department, agency or institution that is included under this chapter and that is subject to the rules and regulations of the state personnel system shall constitute good cause for dismissal of such person from employment.

(3) Beginning July 1, 1999, every male between the ages of eighteen (18) and twenty-six (26) who is required to register under the federal Military Selective Service Act, 50 USCS App. 453, and who is an employee of the state shall not be promoted to any higher position of employment with the state until he submits to the person, commission, board or agency by which he is employed satisfactory documentation of his compliance with the draft registration requirements of the Military Selective Service Act. The documentation shall include a signed affirmation under penalty of perjury that the male employee has complied with the requirements of the Military Selective Service Act.

(4) For a period of two (2) years beginning July 1, 2014, the provisions of subsection (1) shall not apply to the personnel actions of the State Department of Education that are subject to the rules and regulations of the State Personnel Board, and all employees of the department shall be classified as nonstate service during that period. However, any employee hired after July 1, 2014, by the department shall meet the criteria of the State Personnel Board as it presently exists for employment. The State Superintendent of Public Education and the State Board of Education shall consult with the Office of the Attorney General before taking personnel actions authorized by this section to review those actions for compliance with applicable state and federal law.

It is not the intention or effect of this section to include any school attendance officer in any exemption from coverage under the State Personnel Board policy or regulations, including, but not limited to, termination and conditions of employment.

(5) For a period of one (1) year beginning July 1, 2015, the provisions of subsection (1) shall not apply to the personnel actions of the Department of Corrections, and all employees of the department shall be classified as nonstate service during that period. However, any employee hired after July 1, 2015, by the department shall meet the criteria of the State Personnel Board as it presently exists for employment. The Commissioner of Corrections shall consult with the Office of the Attorney General before taking personnel actions authorized by this section to review those actions for compliance with applicable state and federal law.

(6) Through July 1, 2019, the provisions of subsection (1) of this section shall not apply to the personnel actions of the Department of Human Services that are subject to the rules and regulations of the State Personnel Board, and all employees of the department shall be classified as nonstate service during that period. Any employee hired on or after July 1, 2019, by the department shall meet the criteria of the State Personnel Board as it presently exists for employment. The Executive Director of Human Services shall consult with the Office of the Attorney General before taking personnel actions authorized by this section

to review those actions for compliance with applicable state and federal law.

(7) Through July 1, 2019, the provisions of subsection (1) of this section shall not apply to the personnel actions of the Department of Child Protection Services that are subject to the rules and regulations of the State Personnel Board, and all employees of the department shall be classified as nonstate service during that period. Any employee hired on or after July 1, 2019, by the division shall meet the criteria of the State Personnel Board as it presently exists for employment. The Commissioner of Child Protection Services shall consult with the Office of the Attorney General before taking personnel actions authorized by this section to review those actions for compliance with applicable state and federal law.

SECTION 6. Section 25-53-1, Mississippi Code of 1972, is amended as follows:

25-53-1. The Legislature * * * recognizes that in order for the State of Mississippi to receive the maximum use and benefit from information technology and services now in operation or which will in the future be placed in operation, there should be full cooperation and cohesive planning and effort by and between the several state agencies and that it is the responsibility of the * * * the Legislature to provide statutory authority therefor. The Legislature, therefore, declares and determines that for these and other related purposes there is hereby established an agency

of state government to be known as the Mississippi Department of Information Technology Services (MDITS). The Legislature further declares that the Mississippi Department of Information Technology Services (MDITS) shall provide statewide services that facilitate cost-effective information processing and telecommunication solutions. State agencies shall work in full cooperation with the board of MDITS to identify opportunities to minimize duplication, reduce costs and improve the efficiency of providing common technology services across agency boundaries. The provisions of this chapter shall not apply to the Department of Human Services for a period of three (3) years beginning July 1, 2016. The provisions of this chapter shall not apply to the Department of Child Protection Services for a period of three (3) years beginning July 1, 2016.

Notwithstanding the exemption of the Department of Human Services and the Department of Child Protection Services from the provisions of this section, before the Department of Human Services or the Department of Child Protection Services may take an action that would otherwise be subject to the provisions of this section, the department(s) shall give notice of the proposed action to the MDITS for any recommendations by the MDITS. Upon receipt of the notice, the MDITS shall post the notice on its website and on the procurement portal website established by Sections 25-53-151 and 27-104-165. If the MDITS does not respond to the department(s) within seven (7) calendar days after

receiving the notice, the department(s) may take the proposed action. If the MDITS responds to the department(s) within seven (7) calendar days, then the MDITS has seven (7) calendar days from the date of its initial response to provide any additional recommendations. After the end of the second seven-day period, the department(s) may take the proposed action. The MDITS is not authorized to disapprove any proposed actions that would otherwise be subject to the provisions of this section. This paragraph shall stand repealed on July 1, 2019.

SECTION 7. Section 25-53-5, Mississippi Code of 1972, is amended as follows:

25-53-5. The authority shall have the following powers, duties, and responsibilities:

(a) (i) The authority shall provide for the development of plans for the efficient acquisition and utilization of computer equipment and services by all agencies of state government, and provide for their implementation. In so doing, the authority may use the MDITS' staff, at the discretion of the executive director of the authority, or the authority may contract for the services of qualified consulting firms in the field of information technology and utilize the service of such consultants as may be necessary for such purposes. Pursuant to Section 25-53-1, the provisions of this section shall not apply to the Department of Human Services for a period of three (3) years beginning on July 1, 2016. Pursuant to Section 25-53-1, the

provisions of this section shall not apply to the Department of Child Protection Services for a period of three (3) years beginning July 1, 2016.

(ii) Notwithstanding the exemption of the Department of Human Services and the Department of Child Protection Services from the provisions of this section, before the Department of Human Services or the Department of Child Protection Services may take an action that would otherwise be subject to the provisions of this section, the department(s) shall give notice of the proposed action to the MDITS for any recommendations by the MDITS. Upon receipt of the notice, the MDITS shall post the notice on its website and on the procurement portal website established by Sections 25-53-151 and 27-104-165. If the MDITS does not respond to the department(s) within seven (7) calendar days after receiving the notice, the department(s) may take the proposed action. If the MDITS responds to the department(s) within seven (7) calendar days, then the MDITS has seven (7) calendar days from the date of its initial response to provide any additional recommendations. After the end of the second seven-day period, the department(s) may take the proposed action. The MDITS is not authorized to disapprove any proposed actions that would otherwise be subject to the provisions of this section. This subparagraph (ii) shall stand repealed on July 1, 2019.

(b) The authority shall immediately institute procedures for carrying out the purposes of this chapter and supervise the efficient execution of the powers and duties of the office of executive director of the authority. In the execution of its functions under this chapter, the authority shall maintain as a paramount consideration the successful internal organization and operation of the several agencies so that efficiency existing therein shall not be adversely affected or impaired. In executing its functions in relation to the institutions of higher learning and junior colleges in the state, the authority shall take into consideration the special needs of such institutions in relation to the fields of teaching and scientific research.

(c) Title of whatever nature of all computer equipment now vested in any agency of the State of Mississippi is hereby vested in the authority, and no such equipment shall be disposed of in any manner except in accordance with the direction of the authority or under the provisions of such rules and regulations as may hereafter be adopted by the authority in relation thereto.

(d) The authority shall adopt rules, regulations, and procedures governing the acquisition of computer and telecommunications equipment and services which shall, to the fullest extent practicable, insure the maximum of competition between all manufacturers of supplies or equipment or services. In the writing of specifications, in the making of contracts relating to the acquisition of such equipment and services, and in

the performance of its other duties the authority shall provide for the maximum compatibility of all information systems hereafter installed or utilized by all state agencies and may require the use of common computer languages where necessary to accomplish the purposes of this chapter. The authority may establish by regulation and charge reasonable fees on a nondiscriminatory basis for the furnishing to bidders of copies of bid specifications and other documents issued by the authority.

(e) The authority shall adopt rules and regulations governing the sharing with, or the sale or lease of information technology services to any nonstate agency or person. Such regulations shall provide that any such sharing, sale or lease shall be restricted in that same shall be accomplished only where such services are not readily available otherwise within the state, and then only at a charge to the user not less than the prevailing rate of charge for similar services by private enterprise within this state.

(f) The authority may, in its discretion, establish a special technical advisory committee or committees to study and make recommendations on technology matters within the competence of the authority as the authority may see fit. Persons serving on the Information Resource Council, its task forces, or any such technical advisory committees shall be entitled to receive their actual and necessary expenses actually incurred in the performance of such duties, together with mileage as provided by law for state

employees, provided the same has been authorized by a resolution duly adopted by the authority and entered on its minutes prior to the performance of such duties.

(g) The authority may provide for the development and require the adoption of standardized computer programs and may provide for the dissemination of information to and the establishment of training programs for the personnel of the various information technology centers of state agencies and personnel of the agencies utilizing the services thereof.

(h) The authority shall adopt reasonable rules and regulations requiring the reporting to the authority through the office of executive director of such information as may be required for carrying out the purposes of this chapter and may also establish such reasonable procedures to be followed in the presentation of bills for payment under the terms of all contracts for the acquisition of computer equipment and services now or hereafter in force as may be required by the authority or by the executive director in the execution of their powers and duties.

(i) The authority shall require such adequate documentation of information technology procedures utilized by the various state agencies and may require the establishment of such organizational structures within state agencies relating to information technology operations as may be necessary to effectuate the purposes of this chapter.

(j) The authority may adopt such further reasonable rules and regulations as may be necessary to fully implement the purposes of this chapter. All rules and regulations adopted by the authority shall be published and disseminated in readily accessible form to all affected state agencies, and to all current suppliers of computer equipment and services to the state, and to all prospective suppliers requesting the same. Such rules and regulations shall be kept current, be periodically revised, and copies thereof shall be available at all times for inspection by the public at reasonable hours in the offices of the authority. Whenever possible no rule, regulation or any proposed amendment to such rules and regulations shall be finally adopted or enforced until copies of * * * the proposed rules and regulations have been furnished to all interested parties for their comment and suggestions.

(k) The authority shall establish rules and regulations which shall provide for the submission of all contracts proposed to be executed by the executive director for computer equipment or services to the authority for approval before final execution, and the authority may provide that such contracts involving the expenditure of less than such specified amount as may be established by the authority may be finally executed by the executive director without first obtaining such approval by the authority.

(l) The authority is authorized to purchase, lease, or rent computer equipment or services and to operate * * * that equipment and * * * use those services in providing services to one or more state agencies when in its opinion such operation will provide maximum efficiency and economy in the functions of any such agency or agencies.

(m) Upon the request of the governing body of a political subdivision or instrumentality, the authority shall assist the political subdivision or instrumentality in its development of plans for the efficient acquisition and utilization of computer equipment and services. An appropriate fee shall be charged the political subdivision by the authority for such assistance.

(n) The authority shall adopt rules and regulations governing the protest procedures to be followed by any actual or prospective bidder, offerer or contractor who is aggrieved in connection with the solicitation or award of a contract for the acquisition of computer equipment or services. Such rules and regulations shall prescribe the manner, time and procedure for making protests and may provide that a protest not timely filed shall be summarily denied. The authority may require the protesting party, at the time of filing the protest, to post a bond, payable to the state, in an amount that the authority determines sufficient to cover any expense or loss incurred by the state, the authority or any state agency as a result of the

protest if the protest subsequently is determined by a court of competent jurisdiction to have been filed without any substantial basis or reasonable expectation to believe that the protest was meritorious; however, in no event may the amount of the bond required exceed a reasonable estimate of the total project cost. The authority, in its discretion, also may prohibit any prospective bidder, offerer or contractor who is a party to any litigation involving any such contract with the state, the authority or any agency of the state to participate in any other such bid, offer or contract, or to be awarded any such contract, during the pendency of the litigation.

(o) The authority shall make a report in writing to the Legislature each year in the month of January. Such report shall contain a full and detailed account of the work of the authority for the preceding year as specified in Section 25-53-29(3).

All acquisitions of computer equipment and services involving the expenditure of funds in excess of the dollar amount established in Section 31-7-13(c), or rentals or leases in excess of the dollar amount established in Section 31-7-13(c) for the term of the contract, shall be based upon competitive and open specifications, and contracts therefor shall be entered into only after advertisements for bids are published in one or more daily newspapers having a general circulation in the state not less than fourteen (14) days prior to receiving sealed bids therefor. The authority may reserve the right to reject any or all bids, and if

all bids are rejected, the authority may negotiate a contract within the limitations of the specifications so long as the terms of any such negotiated contract are equal to or better than the comparable terms submitted by the lowest and best bidder, and so long as the total cost to the State of Mississippi does not exceed the lowest bid. If the authority accepts one (1) of such bids, it shall be that which is the lowest and best.

(p) When applicable, the authority may procure equipment, systems and related services in accordance with the law or regulations, or both, which govern the Bureau of Purchasing of the Office of General Services or which govern the Mississippi Department of Information Technology Services procurement of telecommunications equipment, software and services.

(q) The authority is authorized to purchase, lease, or rent information technology and services for the purpose of establishing pilot projects to investigate emerging technologies. These acquisitions shall be limited to new technologies and shall be limited to an amount set by annual appropriation of the Legislature. These acquisitions shall be exempt from the advertising and bidding requirement.

(r) All fees collected by the Mississippi Department of Information Technology Services shall be deposited into the Mississippi Department of Information Technology Services Revolving Fund unless otherwise specified by the Legislature.

(s) The authority shall work closely with the council to bring about effective coordination of policies, standards and procedures relating to procurement of remote sensing and geographic information systems (GIS) resources. In addition, the authority is responsible for development, operation and maintenance of a delivery system infrastructure for geographic information systems data. The authority shall provide a warehouse for Mississippi's geographic information systems data.

(t) The authority shall manage one or more State Data Centers * * * to provide information technology services on a cost-sharing basis. In determining the appropriate services to be provided through the State Data Center, the authority should consider those services that:

- (i) Result in savings to the state as a whole;
- (ii) Improve and enhance the security and reliability of the state's information and business systems; and
- (iii) Optimize the efficient use of the state's information technology assets, including, but not limited to, promoting partnerships with the state institutions of higher learning and community colleges to capitalize on advanced information technology resources.

(u) The authority shall increase federal participation in the cost of the State Data Center to the extent provided by law and its shared technology infrastructure through providing such shared services to agencies that receive federal funds. With

regard to state institutions of higher learning and community colleges, the authority may provide shared services when mutually agreeable, following a determination by both the authority and the Board of Trustees of State Institutions of Higher Learning or the Mississippi Community College Board, as the case may be, that the sharing of services is mutually beneficial.

(v) The authority, in its discretion, may require new or replacement agency business applications to be hosted at the State Data Center. With regard to state institutions of higher learning and community colleges, the authority and the Board of Trustees of State Institutions of Higher Learning or the Mississippi Community College Board, as the case may be, may agree that institutions of higher learning or community colleges may utilize business applications that are hosted at the State Data Center, following a determination by both the authority and the applicable board that the hosting of those applications is mutually beneficial. In addition, the authority may establish partnerships to capitalize on the advanced technology resources of the Board of Trustees of State Institutions of Higher Learning or the Mississippi Community College Board, following a determination by both the authority and the applicable board that such a partnership is mutually beneficial.

(w) The authority shall provide a periodic update regarding reform-based information technology initiatives to the

Chairmen of the House and Senate Accountability, Efficiency and Transparency Committees.


SECTION 8. Section 1 of this act shall take effect and be in force from and after its passage, and Sections 2 through 7 of this act shall take effect and be in force from and after July 1, 2016.

PASSED BY THE SENATE
April 19, 2016



PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
April 19, 2016



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR

May 13, 2016
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